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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3612

In re Patent Application of

Winfried Bunsmann et al.

Application Serial No.: 10/580,282

Confirmation No.: 4389

Filed: May 23, 2006

Examiner: Patel, Kiran B

“VEHICLE ROOF STRUCTURE FOR MOTOR
VEHICLE”

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Diane L. Stout, hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date of my signature.

Diane L. Stout

Signature

05/21/08

Date of Signature

**Reply under 37 CFR 1.116
Expedited Procedure Requested Pursuant to MPEP 714.13(V)
Technology Center 3610**

**STATEMENT CONCERNING PRIORITY OF
THE PETITION FILED APRIL 11, 2008 AND APRIL 29, 2008
AND THE NECESSITY FOR A DECISION ON THIS PETITION**

Sir:

A final Office Action for this application was mailed March 21, 2008.

However, because, *inter alia*, several new grounds for objection/rejection were raised for the first time in this final Office Action without legal justification, it is believed that this final Office Action is improper.

Therefore, a “Petition Under 37 CFR 1.181 for Withdrawal of Finality of the Office Action mailed March 21, 2008 and for other necessary action” was originally filed by fax on April 11, 2008.

Regrettably, this facsimile transmission was apparently lost at the PTO and consequently it was not timely entered into the PAIR System. In order to promptly rectify this situation, a copy of the above-noted Petition was re-filed by fax on April 29, 2008.

As of today, a decision on this Petition does not appear to have issued yet.

A decision on this Petition remains necessary and nothing in the Amendment filed herewith should be interpreted as a withdrawal or renunciation of this Petition.

That is, it is hereby requested that a decision on the above-noted Petition be given priority to the handling of this Amendment, so that the procedural posture of this application is clarified for the record prior to consideration of whether the amendments filed herein are timely filed.

Therefore, Applicants continue to await a formal Decision from the Director on the Petition filed on April 11, 2008 and re-filed on April 29, 2008.

If the Director elects not to issue a decision on this Petition for any reason, Applicant respectfully requests a written communication from the Director with an identification of the reason(s) for not issuing a formal Decision, so that the propriety of the Director's determination can be assessed for any post-petition proceedings that may become necessary to protect the Applicants' rights.

It is noted that the Amendment, which is being filed herewith, has been filed prior to the issuance of a decision on the above-noted Petition, because the term for responding to the final Office Action is not tolled by the filing of the Petition. MPEP 1002.

It is respectfully submitted that the Applicants should not be forced into an inferior procedural position with respect to the time periods set forth in MPEP 714.13(I) by having to wait for a decision on the Petition before filing further substantive amendments/arguments to the final Office Action, in view of the fact that improper objections/rejections were first raised by the Examiner in a final Office Action and in some cases in a nearly indecipherable manner, the PTO then apparently lost a promptly-filed Petition to address these legal errors and a decision on the Petition still has not been issued despite the passage of more than 3 weeks since it was re-faxed (and more than 5 weeks since the original filing of the Petition).

That is, it is necessary to file a response to a final Office Action within 2 months of the mailing date thereof in order to preserve the procedural rights accorded in MPEP 714.13(I). According to the PTO's interpretation of the petition rules, the filing of the above-noted Petition does not toll this two-month period. Therefore, this Amendment has been filed at this time so that, in case the finality of the Office Action mailed March 21, 2008 is not withdrawn, the Examiner will be required to comply with the reply term setting requirements of MPEP 714.13(I).

On the other hand, if the Director elects to grant at least the request to re-issue the previous Office Action as a non-final Office Action, it is requested that the present amendments and arguments be taken into account prior to preparing the next action on the merits.

It is respectfully believed that the amendments and arguments in the present Amendment overcome all grounds for objection or rejection made in the final Office Action of March 21, 2008.


However, in the event that any objection or rejection, new or previously presented, remains, then it is absolutely imperative that a formal Decision on the Petition be issued, in order to govern the remaining examination of this application. More particularly, if any objections or objections remain, they must be presented in a further non-final Office Action having a new mailing date.

Moreover, it is again requested that the Examiner be required to identify the legal authority for any further objections or rejections, address all arguments made by the Applicants in the Amendment filed herewith or in previous replies and refrain from any further restriction or species election requirement.

Respectfully submitted,

Winfried Bunsmann et al.

Date: May 21, 2008

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